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7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE WESTERN DISTRICT OF WASHINGTON**

9 BIGBEN INTERACTIVE, SA

10 Plaintiff,

11 v.

12 NINTENDO OF AMERICA, INC.

13 Defendant.

Case No.

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**JURY TRIAL DEMANDED**

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15 This is an action for patent infringement in which BIGBEN INTERACTIVE, SA  
16 (“BIGBEN” or “Plaintiff”) makes the following allegations against Nintendo of America, Inc.  
17 (“Nintendo” or “Defendant”).  
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19 **THE PARTIES**

20 1. Plaintiff is a European corporation organized and existing under the laws of  
21 France, having a principal place of business at 4 rue de la Voyette, CRT2, 59818 Lesquin,  
22 France.

23 2. On information and belief, Defendant is a corporation organized under the laws  
24 of Delaware, with its principal place of business at 4600 150<sup>th</sup> Avenue, N.E., Redmond,  
25 Washington 98052.  
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27  
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**JURISDICTION AND VENUE**

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

4. This Court has original jurisdiction over the subject matter of this claim pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. On information and belief, Defendant is subject to personal jurisdiction in the Western District of Washington consistent with the principles of due process and the Washington Long Arm Statute, because Defendant maintains offices and facilities in this District, offers its products for sale in this District, has transacting business in this district, has committed and/or induced acts of patent infringement in this District, and/or has placed infringing products into the stream of commerce through established distribution channels with the expectation that such products will be purchased by residents of this District.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400.

**COUNT I**  
**INFRINGEMENT OF U.S. REISSUE PATENT NO. RE44,895**

7. Plaintiff repeats and realleges Paragraphs 1-6 as though fully set forth herein

8. Plaintiff is the owner by assignment of United States Reissue Patent No. RE44,895 entitled Interactive Step-Type Gymnastics Practice Device, (the “‘895 Patent”) which is a reissue of U.S. Patent No. 7,938,751. A true and correct copy of the ‘895 patent is attached hereto as Exhibit A.

9. Nintendo has infringed at least one claim of the ‘895 Patent by having made, used, sold or offered for sale a product known as the “Wii Balance Board,” which embodies the invention as claimed in the ‘895 patent.

1           10.     Nintendo's infringement has injured Plaintiff, and Plaintiff is entitled to recover  
2 damages adequate to compensate it for such infringement

3           11.     Nintendo had knowledge of the '895 patent and its infringement of the '895  
4 patent prior to the commencement of this action, yet proceeded to sell and offer to sell the Wii  
5 Balance Board despite an objectively high likelihood that its actions constituted infringement of  
6 a valid patent. Nintendo knew or should have known of this objectively high risk.  
7 Accordingly, Nintendo's acts of infringement are willful, warranting the assessment of  
8 increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an  
9 exceptional case, pursuant to 35 U.S.C. § 285.  
10

11           12.     Plaintiff has been irreparably harmed to an extent not yet determined by  
12 Nintendo's infringement, and will continue to be irreparably harmed in the future unless  
13 Nintendo is enjoined from its activities by this Court.  
14

15                           **PRAYER FOR RELIEF**

16           WHEREFORE, Plaintiff respectfully asks this Court to enter judgment against  
17 Nintendo and against its respective subsidiaries, successors, parents, affiliates, officers,  
18 directors, agents, servants and employees, and all persons in active concert or participation with  
19 Nintendo, granting the following relief:

- 20           A.     The entry of judgment in favor of BIGBEN and against Nintendo;  
21           B.     A permanent injunction prohibiting further infringement of the '895 Patent;  
22           C.     An award of damages adequate to compensate BIGBEN for the infringement  
23 that has occurred, but in no event less than a reasonable royalty for the use made  
24 of the invention of the '895 Patent as provided in 35 U.S.C. § 284, together with  
25 prejudgment interest from the date the infringement began;  
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- 1 D. Award BIGBEN treble damages as provided in 35 U.S.C. § 284;
- 2 E. Find that this case is exceptional and award BIGBEN its costs in this action
- 3 together with reasonable attorneys' fees as provided in 35 U.S.C. § 285; and
- 4 F. Such other relief to which BIGBEN is entitled under law, and any other and
- 5 further relief that this Court or a jury may deem just and proper.
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7 **DEMAND FOR JURY TRIAL**

8 BIGBEN demands a trial by jury on all issues so triable.

9 Respectfully submitted this 17<sup>th</sup> day of April, 2015.

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11

12 s/Daniel D. DeLue

13 Daniel D. DeLue, WSBA #29357

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28 (\*Pro Hac Vice applications pending)

ATTORNEYS FOR PLAINTIFF  
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